

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2160.05
COMPLAINT INVESTIGATOR:	Joe Bear
DATE OF COMPLAINT:	August 16, 2004
DATE OF REPORT:	September 30, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 24, 2004

**COMPLAINT ISSUES:**

Whether Lake Ridge Schools and Northwest Indiana Special Education Cooperative violated:

511 IAC 7-21-3(c) by failing to provide instructional days of the same length as the instructional days of nondisabled students in the same school building;

511 IAC 7-29-1 by suspending a student without complying with required procedures; and

511 IAC 7-27-4(a) by failing to convene a case conference committee (CCC) meeting when required.

On September 15, 2004, the Director of the Division of Exceptional Learners granted an extension of time until September 24, 2004, due to the complexity of the documentation submitted.

On September 24, 2004, the Director of the Division of Exceptional Learners granted a second extension of time until October 1, 2004, due to the need for further review.

**FINDINGS OF FACT:**

1. The Student has been identified as having an emotional disability and determined eligible for special education and related services.
2. The Complainants allege that over a period of two weeks during the 2003-2004 school year, the School telephoned the Complainants (or one of them) and required the Student to leave school during the morning. The Complainants specifically allege that this occurred during the period beginning March 1, 2004, and ending March 12, 2004.
3. The Student's individualized education program (IEP) for the period beginning May 16, 2003, and ending May 14, 2004, did not authorize or require a shortened school day. During the 2002-2003 school year, prior to identifying the Student as a student with a disability, the School utilized a Behavior Contract for the Student. The Behavior Contract incorporated a shortened school day (8:20 a.m. – 11:30 a.m.), with a proviso authorizing further shortening of the school day or placement on homebound if the Student did not meet the terms of the Behavior Contract, or in the alternative lengthening of the Student's school day if the Student did meet the terms of the Behavior Contract. The Student's IEP did not incorporate the Behavior Contract. The Student's IEP did not include a Behavior Intervention Plan (BIP). Although the IEP contains a statement that a BIP will be

developed when the Student returns to school for a full day, a BIP had not been developed as of the date the Complaint was filed.

4. The School did not formally suspend the Student during the 2003-2004 school year. It is undisputed that during the 2003-2004 school year the School did not issue suspension notices and utilize other suspension procedures in connection with the Student's disciplinary or behavior problems.
5. The School denies the Complainants' allegation that the Student was sent home before the end of the school day during the 2003-2004 school year. However, there are gaps and inconsistencies in the School's documentation including the following:
  - a. The Principal's discipline card notes that on March 8, 2004, the Student was disrupting class, put in the hall, and a parent contact was made. The School's attendance record shows the Student absent on March 8, 2004. The School acknowledges that the discipline card may contain a clerical error and the details may refer to March 9, 2004.
  - b. The School's sign-out sheet for March 9, 2004, indicates that the Student left school early with a member of the Student's family. It is undisputed that the Student left school early on March 9, 2004. The Principal's discipline card mentions a doctor's appointment on Tuesday (March 9, 2004). The School's sign-out sheet identifies "personal" as the reason for early dismissal. The Complainants do not acknowledge that the Student had a doctor's appointment on March 9, 2004. On other dates when the Student left school for a doctor's appointment, the family member who picked up the Student wrote "doctor's appointment" on the sign-out sheet, not "personal."
  - c. The School's attendance records show the Student in attendance during the period from March 9, 2004, through March 12, 2004. However, in a letter dated March 31, 2004, from the Principal to the Complainants, the School stated that the Student had not been in school since Monday, March 8, 2004, and had been expected to return to school following a doctor's appointment on March 9, 2004.
  - d. The Principal's discipline card notes that on March 12, one of the Complainants took the Student home early "by choice." However, the early departure is not recorded on the School's sign-out sheet.
  - e. The School attendance records show the Student as absent for a total of 39 days during the 2003-2004 school year. The Student's report card shows a total of 30 days of absence during the 2003-2004 school year.
  - f. The Student's report card shows the Student as receiving homebound instruction during the School's third grading period. The School acknowledges that this is an error, as no homebound instruction was offered or provided.
  - g. The School submitted documentation for this complaint investigation that appeared to be a log created and maintained during the 2003-2004 school year. The School subsequently acknowledged that, although the log was based upon the teacher's plan book from the 2003-2004 school year, the log was created specifically for this complaint investigation. The plan book includes notations of student absences. The plan book is not a complete record of student absences, as the plan book does not show the Student as absent during the week beginning March 29, 2004, and ending April 2, 2004. The School's attendance record shows the Student as absent during that week.
  - h. The School authorized the school secretaries to contact parents when students are misbehaving in the office. The School maintains no records of these calls.
  - i. The School created summaries of the sign-out sheets that show dates that other students were signed out due to disciplinary reasons. The summary omitted at least four dates when students were sent home for disciplinary reasons, according to the sign-out sheets themselves.

- j. The School submitted a copy of the sign-out sheet with names of all other students redacted (i.e., blacked out). The School has failed to provide the unredacted sign-out sheets, so that the complaint investigator can confirm that the Student's name was not inadvertently blacked out.
  - k. The Student's IEP contained a goal regarding positive relationships with peers and teachers that was defined, in part, by less than two office referrals per month. The IEP progress report for the second reporting period refers to "fewer trips to the Principal's office." Except for the Principal's discipline card, the School did not maintain documentation of referrals of the Student to the office.
  - l. The School does not require teachers to utilize disciplinary referral forms or other written records of referrals to the Principal's office. The School did not submit any documentation of teachers' referrals of the Student to the office.
  - m. Except for the sign-out sheets, the School does not have records documenting the temporary removal for part of a school day.
6. The Student's case conference committee (CCC) convened on May 11, 2004, with one of the Complainants participating. The Student's parents are divorced and have joint custody. The CCC developed an IEP for the period from May 11, 2004, through May 10, 2005 (New IEP).
7. On or about May 28, 2004, a private service provider (Provider 1) contacted the School to arrange a meeting about the Student. The School promptly called back to Provider 1 and scheduled an appointment for June 3, 2004. When a second private service provider (Provider 2) called to confirm the date and time, the School informed Provider 2 that a meeting would not be held on June 3, 2004.
8. The School acknowledges that an appointment on June 3, 2004, regarding the Student was written on the Principal's calendar. However, the appointment was not identified on the Principal's calendar as a CCC meeting, and the School has no records or other information that the meeting scheduled for June 3, 2004, was requested by Complainants as a CCC meeting. It is the School's practice to refer all requests for CCC meetings to the appropriate TOR. The call from Provider 1 was not referred to the TOR.

## **CONCLUSIONS:**

- 1. Findings of Fact #2 and #5 indicate that the School has failed to document that during the first two weeks of March 2004, the Student received instructional days of the same length as nondisabled students' instructional days. Finding of Fact #3 indicates that a shortened school day was not authorized by the Student's IEP. Therefore, a violation of 511 IAC 7-21-3(c) is found.
- 2. Although Finding of Fact #4 indicates that the Student was not formally suspended during the 2003-2004 school year, Findings of Fact #2 and #5 indicate that the School has not demonstrated that the Student was not temporarily removed by the School for part of a day, on one or more occasions. Finding of Fact #3 indicates that removal of the Student by the School was not an implementation of the IEP. If the School removes (or requires a parent to remove) a student from school for a disciplinary reason, for a portion of the school day or the entire school day, the removal is a suspension, whether or not a suspension notice is issued. Therefore, a violation of 511 7-29-1 is found.
- 3. Findings of Fact #3 and #6 indicate that a CCC meeting was convened within twelve months of the preceding CCC meeting, as required by 511 IAC 7-27-4(a)(3). Findings of Fact #7 and #8 indicate that the School did not fail to convene the CCC upon request of a parent. The Complainants have

not alleged circumstances requiring a CCC under other subsections of 511 IAC 7-27-4(a). Therefore, no violation of 511 IAC 7-27-4(a) is found.

**The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

Not later than November 12, 2004, Lake Ridge Schools and Northwest Indiana Special Education Cooperative shall develop a system for documenting and tracking as suspensions the School's unilateral, temporary removals of students with disabilities, whether for full days or partial days, and provide information to special education personnel and administrators about how to use the documentation and tracking system. This information may be provided in an inservice training, by memorandum, or other appropriate means.

Documentation of compliance (consisting of forms to be utilized and information provided to personnel) shall be submitted to the Division by November 17, 2004.